IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.5 OF 1999

The Commissioner of Income tax-I
Pune ...Appellant.

V/s.

M/s.Baker Mercer (I)Pvt.Ltd. ...Respondents.

Mr.A.S.Rao for the Appellant.
Mr.P.D.Damodar i/b M/s.Kanga & Co. for the Respondent.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 27th June, 2005.
P.C.:

1. Heard the learned counsel for the Appellant and the learned counsel for the Respondents. The learned counsel for the Appellant tendered a draft amendment to incorporate questions of law which read as under:

i."Whether in the facts and in the circumstances and in the law the tribunal is right in hold that the amount collected by way Excise Duty, Sales Tax Refund cannot be included in the turnover for the purposes of deduction U/s 80 H H C".

2. Amendment allowed. Amendment to be carried out within a week from today. The learned counsel for the Appellant (Revenue) also states that the Tribunal has taken a view that the amount collected by way of Excise Duty, Sales Tax Refund can not be included in the turnover for the purpose of deduction under section 80(H)(H)(C)(1) of the Income Tax Act, 1961. The learned counsel for the Appellant also pointed out that the Division Bench of our High Court in the case of **Commissioner of Income Tax v. Sudarshan Chemicals Industries Ltd. and Others,Bombay, 245 ITR 769** has also taken the view that the Excise Duty and Sales Tax refund can not be included the total turnover for the purpose of computing special deduction under section 80(H)(H)(C)(1) of the Income Tax Act, 1961. In the light of the aforesaid judgment of our High Court, we answer above question in the affirmative and in favour of the assessee and against the Revenue.

3. The Appeal is accordingly dismissed.

(S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)